

## **TITLE 22**

### **EMERGENCY REGULATIONS**

#### **AUTHORIZED TREATMENT OF UNIVERSAL WASTE ELECTRONIC DEVICES**

**Department Reference Number: R-03-19**  
**Office of Administrative Law Emergency Number:**

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#### **FINDING OF EMERGENCY**

Public Resources Code section 42475.2 grants authority to the Department of Toxic Substances Control (DTSC) to adopt emergency regulations for implementation of the Electronic Waste Recycling Act of 2003. According to that section, “adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety, and general welfare.”

#### **AUTHORITY AND REFERENCE**

Health and Safety Code section 25140. This section grants DTSC authority to prepare, adopt, and revise a listing of wastes that are determined to be hazardous.

Health and Safety Code section 25141. This section grants DTSC authority to adopt regulation criteria and guidelines for the identification of hazardous wastes.

Health and Safety Code section 25201. This section grants DTSC authority to require hazardous waste facilities that store, treat, transfer, resource recover, or dispose of hazardous waste to obtain a hazardous waste permit or other grant of authorization.

Health and Safety Code section 25214.9. This section grants DTSC authority to adopt alternative management standards for electronic waste.

Health and Safety Code section 25150.2. This section grants DTSC authority to adopt regulations concerning the transportation of hazardous waste across international boundaries.

The proposed regulatory action implements, interprets, and makes specific Public Resources Code section 42463, subdivision (f)(1). This section establishes the requirement for DTSC to determine the devices that are covered electronic devices.

Public Resources Code sections 42475.1 and 42475.2. This section grants DTSC authority to adopt regulations and emergency regulations for implementation of Statutes 2003, chapter 526 (SB 20).

The proposed regulatory action implements, interprets, and makes specific Public Resources Code section 42476.5. This section establishes the requirement for demonstrations to be made by a person who intends to export covered electronic waste to a foreign destination.

## **INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW**

### **Existing Law**

Current law, Health and Safety Code section 25201, requires any person who conducts treatment of hazardous waste to first obtain a hazardous waste facility permit or other grant of authorization from DTSC. Treatment is broadly defined in Health and Safety Code section 25123.5 to mean, among other things, changing the physical or chemical form of a hazardous waste. Because “covered electronic wastes” are hazardous wastes, recycling activities, such as those specified in recently enacted Public Resources Code section 42463, subdivision (i), constitute treatment of a hazardous waste. Consequently, covered electronic waste recyclers, as defined in Public Resources Code section 42463, subdivision (i), are currently required by Health and Safety Code section 25201 to obtain hazardous waste facility permits or other specified forms of authorization from DTSC. These regulations establish an “other form of authorization” for electronic waste recyclers.

Statutes 2003, chapter 526 (SB 20) enacted the Electronic Waste Recycling Act of 2003 (ch. 8.5 of part 3 of div. 30 of the Pub. Resources Code, commencing with section 42460). The Electronic Waste Recycling Act creates a statewide collection and recycling program for covered electronic wastes. Public Resources Code section 42463, subdivision (f)(1) defines a covered electronic device as: “a cathode ray tube, cathode ray tube device, flat panel screen, or any other similar video display device” that: 1) has a screen size greater than four inches, and 2) DTSC determines would be hazardous waste when discarded. Public Resources Code section 42463, subdivision (g) defines “covered electronic waste” as a “covered electronic device” that has been discarded. Therefore, a covered electronic device is a covered electronic waste and a hazardous waste at the point when it is discarded. Accordingly, any person who is handling a discarded covered electronic device is also managing a hazardous waste, and that person is subject to the applicable standards of chapter 6.5, division 20 of the Health and Safety Code. A covered electronic device is also universal waste and any person handling a universal waste is subject to the applicable requirements of division 4.5 of title 22, California Code of Regulation. SB 20 grants authority to DTSC to adopt emergency regulations establishing alternative management standards for electronic devices that are hazardous wastes, when discarded.

The United States Environmental Protection Agency has not adopted universal waste regulations for electronic devices. Under the federal regulatory system, hazardous waste facility permits (or other forms of authorization) are not required for recycling

activities that constitute treatment of a hazardous waste. Hence, there are no federal regulations that are analogous to the proposed regulations.

### **Policy Statement Overview**

Many discarded electronic devices are hazardous wastes in California under the State's existing criteria. As such, these devices may not be disposed of in municipal solid waste landfills. Electronic waste recovered for recycling can pose a significant threat to public health, worker safety, and the environment if not properly managed.

SB 20 established an aggressive schedule for dealing with electronic wastes. Specifically, the goal is to eliminate electronic waste stockpiles and legacy devices by December 31, 2007 [Pub. Resources Code sec. 42461, subd.(h)]. To meet this goal, the Electronic Waste Recycling Act must be implemented by July 1, 2004 (Pub. Resources Code secs. 42464 and 42465). Prerequisites for implementation include the identification of the initial group of electronic devices to be included in the recycling program and the authorization of recyclers that will recycle them after they are collected. The proposed regulations fulfill these prerequisites.

### **Proposed Regulations**

The proposed regulations list devices presumed to be hazardous waste based on DTSC's testing. The proposed regulations also contain provisions for manufacturers to request a non-hazardous concurrence for a device it has determined to be non-hazardous so that it will not be a covered electronic device under SB 20.

The proposed regulations define four categories of authorized treatment under the universal waste rule for electronic devices. The proposed regulations would establish a new form of authorization for three of these categories. Handlers who conduct authorized treatment will not be required to obtain hazardous waste facility permits from DTSC. Instead, they will be subject to a self-implementing grant of authorization. The self-implementing authorization would apply equally to small and large quantity handlers. Handlers who only conduct treatment activities that typically occur during normal use of the electronic devices (e.g., removing batteries) are still authorized to do so, as under current regulations. Handlers who conduct authorized treatment in any of the other three categories are subject to specific regulatory standards commensurate with the associated level of hazard for each category of authorized treatment. The categories are as follows:

- 1) manual disassembly or dismantling,
- 2) shredding, crushing, and screening that produce exempt scrap metal or treatment residuals that are exempt from regulation, and
- 3) grinding and shredding that produce residuals that are not exempt scrap metal or otherwise exempt from regulation as hazardous waste.

These standards include prohibitions on the use of chemicals or external heat during treatment and administrative requirements, such as financial assurance for closure and liability insurance.

This approach is consistent with the multi-part definition of covered electronic waste recycler contained in Public Resources Code section 42463, subdivision (i) and with authority granted DTSC by SB 20 in Health and Safety Code section 25214.9. The new authorization is being used for the two low-hazard categories of recyclers to promote participation by recyclers in the SB 20 collection and recycling program, while maintaining an appropriate level of regulation over their activities. Establishing these regulatory standards is necessary so that the State may realize the full potential benefit to human health and the environment that will result from the collection and recycling of covered electronic devices pursuant to the Electronic Waste Recycling Act.

## **STATEMENT OF FACTS SUPPORTING FINDING OF EMERGENCY**

DTSC finds this rulemaking an emergency as a matter of law pursuant to Public Resources Code section 42475.2. According to that section, “adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety, and general welfare.”

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE**

DTSC has found this rulemaking project to be exempt under CEQA. A draft of the Notice of Exemption (NOE) is available for review with the rulemaking file and the NOE will be filed with the State Clearinghouse when the regulations are adopted.

## **FISCAL IMPACT ESTIMATES**

**Mandates on Local Agencies and School Districts:** DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

### **Estimate of Potential Cost or Savings to Local Agencies Subject to**

**Reimbursement:** DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other non-discretionary costs or savings to local agencies. Local agencies that operate recycling centers for universal electronic waste under these regulations will avoid incurring additional program costs because the proposed regulations do not require the local agency to obtain a hazardous waste facility permit.

These regulations also identify the electronic devices that DTSC has determined are hazardous waste. Local agencies, as with all other businesses and persons, will be required to pay a small fee at the purchase of any covered electronic device.

**Cost or Savings to Any State Agency:** DTSC has made a preliminary determination that the proposed regulations will have no significant impact on State revenue or costs. State agencies operating universal electronic waste recycling programs will avoid incurring additional costs for those programs because the proposed regulations do not require the state agency to obtain a hazardous waste facility permit.

These regulations also identify the electronic devices that DTSC has determined are hazardous waste. State agencies, as with all other businesses and persons, will be required to pay a small fee at the purchase of any covered electronic device.

**Cost or Savings in Federal Funding to the State:** DTSC has made a preliminary determination that the proposed regulations will have no impact on Federal revenue or costs.

### **Finding Pursuant to Government Code Section 11346.3**

DTSC finds that it is necessary for the preservation of public health and safety, and the protection of the environment that the proposed emergency regulations apply to businesses in California. The proposed regulations require annual reports from universal waste handlers of electronic devices. These handlers must report (to DTSC) their identity, location and the quantities of universal waste electronic devices handled and recycled each year and the final disposition of the universal waste electronic device. This information will be utilized by DTSC and the California Integrated Waste Management Board to administer the Electronic Waste Recycling Act. Specifically, this information will be utilized by DTSC to schedule and prioritize annual inspections of the covered electronic waste recyclers as required by Public Resources Code, section 42479(b)(2)(A). The information will also be used to track the universal waste electronic devices handled and to verify the final disposition of the wastes. If the information were not obtained, DTSC would be unable to inspect the recycling facilities or destination facilities. In that event, the facilities might operate in an environmentally detrimental manner (e.g., might allow the releases of leaded CRT glass to the surrounding environment, might send waste or treatment residuals to a facility unauthorized to manage these materials or might send the materials for disposal). In addition, if the disposition of the waste is unknown, DTSC cannot follow up to ensure the wastes were safely recycled. Therefore, DTSC finds the reports required by the proposed regulations are necessary for the protection of public health and the environment.